

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 224 of the Act	)	WC Docket No. 07-245
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

**Comments of CPS Energy**

**Patricia Ana Garcia Escobedo  
CPS Energy  
145 Navarro  
P.O. Box 1771  
San Antonio, Texas 78296**

**August 16, 2010**

## TABLE OF CONTENTS

<b>I.</b>	<b>BACKGROUND .....</b>	<b>4</b>
<b>II.</b>	<b>POLE RENTAL RATES FOR COMMUNICATIONS PROVIDERS SHOULD ALLOW POLE OWNERS TO RECOVER THEIR COSTS .....</b>	<b>5</b>
<b>III.</b>	<b>CPS ENERGY'S CONCERNS WITH OTHER ISSUES .....</b>	<b>8</b>
	<i>A. Boxing and Bracketing .....</i>	<i>8</i>
	<i>B. Five-Stage Timeline for Wired Pole Attachment. ....</i>	<i>9</i>
	<i>C. Adjustments to Timelines for Number of Attachment Requests .....</i>	<i>10</i>
	<i>D. Wireless Attachment Timeline Issues .....</i>	<i>11</i>
	<i>E. Use of Outside Contractors .....</i>	<i>11</i>
	<i>F. Approval and Certification of Contract Workers .....</i>	<i>12</i>
	<i>G. Working Among the Electrical Lines .....</i>	<i>12</i>
	<i>H. Other Options to Expedite Pole Access .....</i>	<i>13</i>
	<i>I. Improving the Availability of Data .....</i>	<i>14</i>
	<i>J. Improving the Enforcement Process . . . . .</i>	<i>14</i>
	<i>K. Unauthorized Attachments . . . . .</i>	<i>14</i>
<b>III.</b>	<b>Conclusion .....</b>	<b>15</b>

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 224 of the Act	)	WC Docket No. 07-245
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

**Comments of CPS Energy**

CPS Energy,<sup>1</sup> an owner of approximately 412,000 utility poles, submits comments in the above-styled and numbered Order and Further Notice of Proposed Rulemaking (Further Notice), regarding pole attachments authorized by Section 224 of the Communications Act of 1934, as amended (the Act).<sup>2</sup> It urges the Federal Communications Commission (Commission or FCC) not require pole owners to subsidize the attachment of communications providers' facilities to the owners' poles, as will result from adoption of a revised Telecom Rate Formula.<sup>3</sup> CPS Energy supports the continued use of a formula that allows pole owners to recover the fully allocated costs, including capital costs, they incur when communications providers attach their equipment to the owners' poles.

CPS Energy comments also on the several other issues addressed by the Further Notice, as the Commission is recommending application of the pole attachments rules to municipally

---

<sup>1</sup> CPS Energy™ is the trade name of City Public Service of San Antonio, Texas, acting by and through the City Public Service Board.

<sup>2</sup> 47 U.S.C. § 224.

<sup>3</sup> See § 1.1409(e)(2) of Title 47 of the Code of Federal Regulations (the Telecom Rate Formula).

owned utilities.<sup>4</sup> It brings to the Commission's attention its concerns regarding the five-stage timeline and the use of contractors, among other concerns.

## **I. BACKGROUND**

As the electric and gas company owned by and serving the City of San Antonio, Texas, the seventh largest city in the United States, and Bexar County, CPS Energy currently is exempt from the Act's requirements.<sup>5</sup> With the following provision, however, the Public Utility Regulatory Act<sup>6</sup> requires CPS Energy's compliance with the Commission's Telecom Rate Formula set forth in section 1.1409(e)(2) of Title 47 of the Code of Federal Regulations:

A municipally or a municipally owned utility may not charge any entity, regardless of the nature of the services provided by that entity, a pole attachment rate or underground conduit rate that exceeds the fee the municipality or municipally owned utility would be permitted to charge under rules adopted by the Federal Communications Commission under 47 U.S.C. section 224(e) if the municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission. In addition, not later than September 1, 2006, a municipality or municipally owned utility shall charge a single, uniform pole attachment or underground conduit rate to all entities that are not affiliated with the municipality or municipally owned utility regardless of the services carried over the networks attached to the poles or underground conduit.<sup>7</sup>

---

<sup>4</sup> The Commission recommends that Congress eliminate the exemptions in Section 224 of the Act. National Broadband Plan at 112, Recommendation 6.5.

<sup>5</sup> See 47 U.S.C. §§ 224(a)(1), 224(a)(3).

<sup>6</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 1998 & Supp. 2005) (PURA).

<sup>7</sup> PURA § 54.204(c). PURA further prohibits discrimination by municipally owned utilities against certificated telecommunications providers regarding placement of facilities in public rights-of-way and buildings, or in pole attachment rates or terms. PURA § 54.204(a). Municipalities and municipally owned utilities cannot discriminate "in favor of or against" certificated telecommunications providers, regarding pole attachment or underground conduit rates or terms, or placement of facilities in public rights-of-way and the reasonable compensation for that placement, regardless of the form of compensation: money, services, use of facilities, or another kind of consideration. PURA § 54.204(b)

CPS Energy, therefore, uses the current Telecom Rate Formula to determine the pole attachment rate it cannot exceed and charges the rate to all communications providers, regardless of the services they provide.<sup>8</sup>

The Commission's revision of the Telecom Rate Formula, thus, is of great import to CPS Energy.

## **II. POLE RENTAL RATES FOR COMMUNICATIONS PROVIDERS SHOULD ALLOW POLE OWNERS TO RECOVER THEIR COSTS**

CPS Energy believes, like the Commission,<sup>9</sup> that the current Telecom Rate Formula is a reasonable upper bound for determining the pole attachment rate for communications providers that do not provide solely cable service. But a pole attachment rate lower than produced by the current Telecom Rate Formula penalizes pole owners by excluding several costs the owners incur. CPS Energy recommends the Commission establish a fully allocated cost methodology that permits pole owners to recover the costs they incur when communications providers attach their equipment to the owners' poles.

No language in Section 224 requires that pole owners calculate pole attachment rates from two rate formulas, one applicable solely to cable service providers, and charge the higher of the two rates. Section 224 of the Act requires two different pole attachment rates, each applicable distinctly to "solely" cable and telecommunications providers. Subsection (d) establishes "the rate for any pole attachment used by a cable television system solely to provide

---

<sup>8</sup> The Commission's Cable Rate Formula used "solely to provide cable services" has no application in CPS Energy's dealings with communications providers seeking to attach to CPS Energy poles because no communications providers in the CPS Energy service area provide solely cable services.

<sup>9</sup> Further Notice at ¶ 132 ("To begin identifying the range of reasonable rates that could result from the telecom rate formula, we first identify the present telecom rate as a reasonable upper bound.")

cable service,”<sup>10</sup> with subsection (e), effective five years after February 8, 1996, setting “charges for pole attachments used by telecommunications carriers to provide telecommunications services . . . .”<sup>11</sup> CPS Energy does not believe Section 224 grants the Commission the authority for the establishment of a pole attachment rate selected from the higher of two choices.

As evident from a comparison of the revised and current formulas, the revised Telecom Rate Formula<sup>12</sup> proposal limits the “Carrying Charge Rate” to “Maintenance and Administrative” activities, while the current Telecom Rate Formula<sup>13</sup> allows additional activities that establish the pole owner’s “Carrying Charge Rate.” The Carrying Charge Rate, as defined

<sup>10</sup> 47 U.S.C. § 224(d)(3).

<sup>11</sup> 47 U.S.C. §§ 224(e)(1), 224(e)(4).

<sup>12</sup> The revised Telecom Rate Formula, set forth at Appendix B, Proposed Rules, No. 5, is:

$$\text{Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[ \begin{array}{c} \text{Maintenance and Administrative} \\ \text{Carrying Charge Rate} \end{array} \right]$$

$$\text{Where Space Factor} = \left[ \frac{\left( \frac{\text{Space}}{\text{Occupied}} \right) + \left( \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

<sup>13</sup> The current Telecom Rate Formula, set forth at 47 C.F.R. § 1.1409(e)(2), is:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[ \begin{array}{c} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array} \right]$$

$$\text{Where Space Factor} = \left[ \frac{\left( \frac{\text{Space}}{\text{Occupied}} \right) + \left( \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

by the Commission, is “a composite rate that reflects separate carrying charge rates for the costs of owning and maintaining poles . . . .” The rate includes a “pole owner’s administrative, maintenance, and depreciation expenses, a return on investment, and taxes.”<sup>14</sup> “The net cost of a bare pole is multiplied by the carrying charge rate to determine the annual cost of a pole.”<sup>15</sup> But the revised Telecom Rate Formula will not allow pole owners to recover their annual depreciation, return on investment, and taxes costs, and CPS Energy recommends the rule permit the continued recovery of those costs.

Not recovering the costs CPS Energy incurs when communications providers make attachments to CPS Energy-owned poles violates two State constitutional provisions, as the unrecovered costs could be considered gifts or donations to private corporations. Article XI, Section 3, of the Texas Constitution prohibits any county, city, or other municipal corporation from making an appropriation or donation to a private corporation or association or loaning its credit. Article III, Section 52, of the Texas Constitution further denies the Legislature the power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company, except as provided by the section. The subsections do not allow the granting of public money that would result if CPS Energy’s pole attachment rate did not recover its costs of allowing private corporations to make attachments to CPS Energy-owned poles.

---

<sup>14</sup> Further Notice at fn. 356, citing to *1987 Rate Order*, 2 FCC Rcd at 4391, para. 25; *2001 Order on Reconsideration*, 16 FCC Rcd at 12121, para. 28; and *2001 Order on Reconsideration*, 16 FCC Rcd at 12121, para. 28.

<sup>15</sup> *Id.*

In response to the Commission's issues regarding rates for incumbent local exchange carriers (ILECs),<sup>16</sup> CPS Energy takes the position that PURA requires all communications providers, including ILECs, to pay the same pole attachment rate, and CPS Energy currently charges all communications providers no greater than the pole attachment rate determined by the current Telecom Rate Formula. CPS Energy further affords the ILEC to "opt in" to the existing CPS Energy pole attachment license agreement.<sup>17</sup>

### **III. CPS ENERGY'S CONCERNS WITH OTHER ISSUES**

As noted above, the Commission is recommending application of the pole attachments rules to municipally owned utilities, and CPS Energy, thus, comments on several additional issues addressed by the Further Notice.

#### ***A. Boxing and Bracketing***

The Commission decided in the Order provision of the Further Notice that a pole owner must provide boxing and bracketing if the pole owner uses boxing and bracketing to conduct its services.<sup>18</sup> CPS Energy will not allow communications providers to engage in boxing or bracketing, although it uses boxing and/or bracketing in the provision of its services.

Boxing can make it difficult for the relocation or transfer of electric facilities if the riser, the pole mounted assembly, including conduit encased cable, which connects the overhead to underground electric system, is "trapped." The trapping of a riser raises safety, reliability and generally applicable engineering concerns for CPS Energy. Section 224(f)(2) permits the denial of boxing and bracketing: "Notwithstanding paragraph (1), a utility providing electric service

---

<sup>16</sup> Further Notice at ¶ 144.

<sup>17</sup> Further Notice at ¶ 147. However, the ILEC has not accepted CPS Energy's offer.

<sup>18</sup> Further Notice at ¶ 9.



may deny a cable television system or any telecommunications carrier access to its poles . . . on a non-discriminatory basis . . . for reasons of safety, reliability and generally applicable engineering purposes.”

Bracketing raises several issues, such as who is responsible for the cost and maintenance on the bracket used by all pole attachers on a pole and the unbalanced loading on the pole resulting from the numerous cables on one bracket. CPS Energy’s focus is the provision of electric and gas services to its end use customers, and it is not prepared to undertake these additional recordkeeping issues.

***B. Five-Stage Timeline for Wired Pole Attachment***

Based on its experience with managing the provision of electric service to over 700, 000 customers and providing space on its poles to communications providers, CPS Energy recommends a revision of Stages 2, 4, and 5 of the Commission’s proposed five-stage timeline as explained below.

CPS Energy recommends a Stage 2 - Survey timeline consistent with its current process of 30 days for a job with 25 or less poles and 60 days for a job with 26-50 poles. CPS Energy does not “estimate” the job but requires that designers actually plan the job and provide each requesting communications provider the planned costs for jobs requiring make-ready work.

At Stage 4 – Performance, the Commission’s proposed 45 days to conduct construction is insufficient time. CPS Energy’s experience is that it needs 60-days to complete construction.

Regarding Stage 5 – Multiparty Coordination, CP SEnergy provides 30 days and further moves the communications provider after 30 days if the communications provider fails to comply. CPS Energy also requests that the Commission’s Stage 5 specify that the

communications providers are responsible for the cost of the move(s), as the communications providers otherwise have no incentive to move their own attachments.

CPS Energy further seeks clarification about whether the Commission's proposed 30 days requires 30 days for all communications providers to be transferred or whether the proposal permits 30 days per each communications provider. CPS Energy supports the 30-day proposal for each communications provider and allowing the pole owner to determine the total timeframe, if two or more communications providers are on the pole.

***C. Adjustments to Timelines for Number of Attachment Requests***

CPS Energy also recommends adjustments to the timelines based on the number of applications received per month from the communications providers and the number of poles per application.<sup>19</sup> CPS Energy urges the Commission limit the number of poles on an application to 50. CPS Energy, furthermore, supports New York's required advanced notice of "significant" requests.<sup>20</sup> Although not required by the current CPS Energy pole attachment license agreement, communications providers seeking to attach to CPS Energy's poles usually provide advance notice when a large job is forthcoming.

In response to the Commission's questions regarding large, medium, and small requests,<sup>21</sup> CPS Energy bases its timelines on the size and number of jobs and treats all communications providers the same regardless of the size of the utility. CPS Energy, thus, recommends allowing municipal utilities to self-define small, medium, and large limits.

---

<sup>19</sup> Further Notice at ¶ 46-51.

<sup>20</sup> Further Notice at ¶ 47, citing to New York Order, App. A at 1.

<sup>21</sup> Further Notice at ¶ 48.

***D. Wireless Attachment Timeline Issues***

If the wireless facilities are not in the communications space, CPS Energy does not allow communications providers installing wireless attachments the same timeframe as wired attachments and does not support such a proposal. Wireless equipment in the electrical space raises many more safety and reliability concerns that take more time to thoroughly research,<sup>22</sup> and CPS Energy recommends the provision of additional time that will allow pole owners to complete/conduct the evaluations, as CPS Energy currently provides in its operations. Communications providers, moreover, must sign an addendum specific to wireless attachments in the electric space. These networks also require electricity, and CPS Energy needs additional time to determine energy cost based on the specific equipment used by each wireless provider.

***E. Use of Outside Contractors***

CPS Energy currently does not permit communications providers to hire outside contractors to perform survey and make-ready work. If required to allow communications providers to hire outside contractors to perform survey and make-ready work, CPS Energy recommends that it be permitted to require that the contractors must be on the list of current CPS Energy-approved contractors. CPS Energy approves any contractors that meet its Contract for the Construction of Overhead Electric Distribution Facilities bid requirements.<sup>23</sup> Contractors, a list of which would be provided to communications providers, would have to execute the current CPS Energy pole attachment license agreement.

---

<sup>22</sup> CPS Energy also required its first wireless communications provider applicant to install a mock-up of the antennae at the CPS Energy training grounds.

<sup>23</sup> See Exhibit A, the initial 6 pages of the CPS Energy Contract for the Contract for the Construction of Overhead Electric Distribution Facilities, which are the Minimum Qualifications for Prospective Bidders for Overhead Electric Distribution Services.

CPS Energy further provides information to the communications providers about planning and construction contractors that have contracts with CPS Energy.<sup>24</sup> Communications providers also can select contractors of their choice to perform post make-ready work, but the contractors must comply with the requirements of the pole attachment license agreement executed by each communications provider.<sup>25</sup>

***F. Approval and Certification of Contract Workers***

Upon compliance with the process explained in section E above, CPS Energy would provide its survey and make-ready contractor list if requested by communications providers.<sup>26</sup> However, even if contractors are approved and certified by a communications provider or another electric utility, those contractors are not necessarily approved by CPS Energy. As noted above, the contractors must meet the Contract for the Construction of Overhead Electric Distribution Facilities bid requirements to receive CPS Energy approval.

***G. Working Among the Electrical Lines***

As explained above, if CPS Energy allows a communications provider to work in the electric space, the communications provider must sign the wireless addendum, and the contractors selected by the communications providers to install their equipment must be on CPS Energy's approved contractor list.<sup>27</sup> These requirements assist CPS Energy in ensuring the safety and reliability of its electric infrastructure.

---

<sup>24</sup> Further Notice at ¶ 58.

<sup>25</sup> Further Notice at ¶ 59.

<sup>26</sup> Further Notice at ¶ 64.

<sup>27</sup> Further Notice at ¶ 69.

#### ***H. Other Options to Expedite Pole Access***

CPS Energy requires payment in full from each communications provider before performing make-ready work and opposes payment for make-ready work in stages.<sup>28</sup> Payment in stages adds clerical work for both CPS Energy and the communications providers that is unnecessary, and CPS Energy, thus, opposes the Commission's proposal.

CPS Energy does not have a schedule of charges because it invoices communications providers based on the designed job. The charges are produced by the CPS Energy Work Management Information System (WMIS) and are specific to the cost of the design.

CPS Energy strongly opposes any attempt to make the pole owner the clearinghouse for all attachment-related expenses when communications providers make adjustments to their facilities attached to poles during the upgrade and make-ready processes.<sup>29</sup> Management of the monetary exchange places an unfair burden on the pole owners, who will have to obtain billing from all existing communications providers, prepare billing for the new communications provider, collect from the new communications provider, and then disburse payment to the existing communications providers. A pole owner should not have to provide communications providers services that are unrelated to its poles or its provision of services to its end use customers. CPS Energy's current practice requires the new communications provider to coordinate the construction efforts and payment with the existing communications providers. CPS Energy is not involved in the coordination of construction unless there is a dispute and never deals with monetary exchange between the utilities.

---

<sup>28</sup> Further Notice at ¶ 70.

<sup>29</sup> Further Notice at ¶ 73.

***I. Improving the Availability of Data***

A national database containing specific information for communications providers to determine the best way to launch in a potential new market<sup>30</sup> appears to raise more questions than benefits. What entity would manage the system? How regularly would updates to pole information be required? Which communications providers would have access to the data? CPS Energy is not aware that communications providers have any problem knowing what poles are available in the CPS Energy service area and opposes the proposal.

***J. Improving the Enforcement Process***

With few exceptions, CPS Energy works out disputes with communications providers before resorting to the filing of a formal complaint. It, thus, supports the New York Commission requirement that parties should seek resolution of their dispute before filing a formal complaint with the Commission.<sup>31</sup>

***K. Unauthorized Attachments***

CPS Energy, with a pole attachment license agreement that imposes penalties for unauthorized attachments, supports the penalty regime for unauthorized attachments of the Oregon Public Utilities Commission.<sup>32</sup>

The CPS Energy pole attachment license agreement permits CPS Energy to remove unauthorized attachments if the communications provider, after receiving notice from CPS Energy, does not remedy the matter after 45 days, and CPS Energy recommends such a provision in the Commission's rule. After 60 days of noncompliance by the communications provider, CPS Energy also has the option to terminate the agreement.

---

<sup>30</sup> Further Notice at ¶¶ 75-77.

<sup>31</sup> Further Notice at ¶ 81.

<sup>32</sup> Further Notice at ¶ 95.

#### IV. CONCLUSION

CPS Energy appreciates the Commission's consideration of its comments. Governmental entities must recover their fully allocated costs, notwithstanding the Commission's effort "to lower the costs of telecommunications, cable, and broadband deployment and to promote competition."<sup>33</sup> CPS Energy, thus, urges the Commission to retain the current Telecom Rate Formula as stated in section 1.1409(e)(2) of Title 47 of the Code of Federal Regulations and further recommends the consideration and adoption of its comments regarding the other issues.

Respectfully submitted,  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771  
(210) 353-6832 (Facsimile)  
(210) 353-5689



---

Patricia Ana Garcia Escobedo  
Senior Counsel - Regulatory  
Mail Stop: 101008  
State Bar No. 12544900  
[paescobedo@cpsenergy.com](mailto:paescobedo@cpsenergy.com)

---

<sup>33</sup> Further Notice at ¶ 1.

# EXHIBIT A

CONTRACT  
FOR  
THE CONSTRUCTION OF  
OVERHEAD ELECTRIC DISTRIBUTION FACILITIES

PURCHASE ORDER NO. \_\_\_\_\_

CITY PUBLIC SERVICE BOARD  
P.O. BOX 1771  
SAN ANTONIO, TEXAS 78296-1771  
CA-MAY07038



## INVITATION FOR BIDS

REQUEST FOR QUOTATION NO. \_\_\_\_\_

FOR



CITY PUBLIC SERVICE BOARD  
OF SAN ANTONIO, TEXAS

CPS Energy requests bids for installation of Overhead Electric Distribution facilities and associated materials on an as-needed basis and as requested by CPS Energy for a three (3)-year term with firm fixed pricing for the first two (2) years. Pricing for the third year may be adjusted in accordance with the net change of the Wage and Salary Consumer Price Index (CPI-W) between June 1, 2007 and July 31, 2009. CPS Energy is interested in companies whose primary business concerns, qualifications, technical competence and specialized experience in Overhead Line Construction services indicate their ability and willingness to satisfactorily perform this service.

Sealed Bids will be received in the office of Mr. Tim Clark, Mail Drop # 110901, Purchasing and Small Business Development, CPS Energy, 134 Navarro Street, San Antonio, Texas 78205, or P.O. Box 2906, San Antonio, Texas 78299-2906, by the date and time stated in the Request for Quotation letter.

**CPS Energy reserves not only the right to reject any and all bids and to waive minor formalities and irregularities, but also the right to evaluate the bids to determine which, in its judgment, represents the best qualified for the services requested.**

**A mandatory pre-bid meeting will be held at the location and on the date specified in the Request for Quotation letter, at which time Bidders may discuss any questions pertaining to the scope of services covered in this Agreement. It shall be mandatory for the Bidder to attend the entire pre-bid meeting in order for its bid to be considered responsive. There shall be no exceptions.**

CPS Energy assumes no liability or responsibility for the costs incurred by the Bidders for any materials, efforts or expenses required in the preparation of bids or in connection with presentations or demonstrations prior to the issuance of a Contract.

## MINIMUM QUALIFICATIONS FOR PROSPECTIVE BIDDERS FOR OVERHEAD ELECTRIC DISTRIBUTION SERVICES

### 1. GENERAL

Each Bidder must submit information with its bid for Overhead Electric Distribution Services for CPS Energy's use in qualifying the Bidder and evaluating the Bidder's ability to satisfactorily perform the services requested. Bids submitted by Bidders not meeting the minimum qualifications are subject to rejection. Failure to submit all bid documents and associated information to CPS Energy accurately, in full, and within the time period specified may, at CPS Energy's sole discretion, result in the automatic termination of the Bidding firm's quotation.

If there is any question regarding the scope of this project, Bidder shall request in writing, by the date and time specified in the pre-bid meeting, a formal clarification from the CPS Energy Buyer, Mr. Tim Clark, who may be reached via e-mail at [TMClark@cpsenergy.com](mailto:TMClark@cpsenergy.com). All such clarifications will be sent to each prospective Bidder who attended the pre-bid meeting.

CPS Energy reserves the right to make any or all of the requested information part of the Contract Documents if the Bidder's bid is accepted. Any changes or substitutions shall not be cause for additional financial compensation nor shall it invalidate the Contract in any way.

CPS Energy reserves the right to award the Contract to more than one (1) Bidder meeting the qualifications and requirements referenced in these Contract documents. **Therefore**, more than one (1) Contractor may be established for the purpose of meeting CPS Energy's requests for services, thereby resulting in **more than one Purchase Order being issued for this service**. However, there is not guarantee an order/request will ever be placed even if a contract is awarded.

### 2. QUALIFYING FACTORS

The Bidders submitting bids for Overhead Electric Distribution Services shall meet the following minimum qualifications:

- a. Bidder and Bidder's employees must have performed live-line overhead electric distribution installation services for at least two (2) electric utility companies within the past five (5) years. Preference will be placed on Bidders who have actually performed live-line construction or maintenance on 34.5 GrdY/19.92 kV, or higher, distribution circuit installations for electric utility companies within the past five (5) years.
- b. An individual's qualifications to perform the specific services requested will be considered. References to previous work experience must be verifiable. All

Supervisors, Line Crew and Pole Crew Foremen, Linemen, and Apprentices must submit written resumes and all applicable certifications held to the appropriate CPS Energy Contract Field Representative for review and approval at least one (1) week in advance of their starting Work on any CPS Energy project. Resumes must include all experience in transferring utilities and operating on and around energized primary electric lines, 7.2 kv minimum, preferably 34.5 GrdY/19.92 kV, with references that can verify stated experience, including a contact name, position or job title, and telephone number. CPS Energy, in its sole discretion, has the right to reject any individual who has been proposed to work on CPS Energy projects.

- c. Bidder and Bidder's employees performing overhead electric construction and maintenance installation services must have a minimum of three (3) years of actual experience at the Journeyman Lineman level performing live-line overhead distribution services for an electric utility company or have a minimum of four (4) years of actual work experience at the Journeyman Lineman level performing similar services and be a "certified" Journeyman. A Journeyman shall be considered "certified" if he/she is a graduate of an apprenticeship program in accordance with the National Joint Apprenticeship Training Committee (NJATC) guidelines under the auspices of the U.S. Department of Labor, or, at the discretion of the Field Rep, possess equivalent verifiable certification documents. Apprentices must have a minimum of one (1) year of experience working on live-line overhead distribution work and must work alongside a Journeyman Lineman with a minimum of three (3) years of overhead live-line work experience. Bidder's Lineman apprentice training program must be certified by the U.S. Department of Labor. Bidder's Lineman apprentice training program must include pole climbing.
- d. Foremen should have at least ten (10) years of experience as a Journeyman Lineman and at least one (1) year experience at the Foreman level working on and around energized high-voltage primary electric lines, 7.2 kv minimum, preferably 34.5 GrdY/19.92 kV. Supervisors (i.e., General Foremen, Project Managers, Superintendents, or those in comparable responsibility levels) should have at least five (5) years of experience at the Foreman level working on and around energized high-voltage primary electric lines, 7.2 kv minimum, preferably 34.5 GrdY/19.92 kV, and at least one (1) year of experience in a supervisory capacity over crews performing the same or similar Work.
- e. Bidder and Bidder's employees performing pole setting or removal functions on overhead electric distribution projects must have a minimum of two (2) years of actual experience performing the same or similar function around live-line overhead distribution facilities.
- f. Bidder must be able to furnish a minimum of three (3) fully trained and fully operational crews pursuant to the qualifications and requirements stated within these Contract documents in order for its bid to be reviewed for potential award. The actual

number of crews needed to begin the requested services shall be determined at the time of contract award.

- g. Bidder shall furnish a description of the Bidding Firm's organizational structure and operational history. Include a list of all personnel to be involved in this contract, including experience and written resumes of key members, particularly as the experience may relate to this project.
- h. Bidder shall furnish a list of the last ten projects in which the services performed are the same or similar to those defined in the plans and specifications for this Contract, with references that can verify the services performed and Bidder's performance, to include contact names, contact job titles, company names, company addresses, and contact telephone numbers, along with the associated project names/titles, project numbers, descriptions of the projects, project start and completion dates, and project values. Bidder must provide documentation reflecting its experience, including **actual live-line experience with 34.5/19.9 GrdY kV distribution services. At least two (2) major utility references must be submitted along with sufficient project details for verification of 34.5 GrdY/19.92 kV live-line construction and maintenance successfully performed by Bidder.** An electric utility co-operative is not considered a major utility company.
- i. A list of all crew personnel proposed to be involved in this Contract must be provided. Include employee name, job title, years of experience with Bidder and qualifications as related to the requirements of this contract.
- j. Bidder shall provide a detailed response that outlines their emergency response plan and workforce capabilities ("Workforce Plan") to meet the emergency response requirements obligations described in the "Statement of Work" Section. The Workforce Plan shall include the Bidder's requested compensation structure for the emergency response as required under Exhibit C-1. Bidder may propose a method whereby there will be mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, blended hourly rates as stated in the Contract Documents or a cost to be determined in a manner agreed upon by the parties at a mutually acceptable fixed or percentage fee for mobilization and hourly rates once on site.

### 3. **ADDITIONAL INFORMATION TO BE SUBMITTED**

The following documentation must be submitted with the Bidder's bid unless otherwise stated below:

- a. Provide last fiscal year's financial statements (audited preferred), and the most recent quarter's financial statements. Financial statements should include the balance sheet,

income statement, cash flow statement, statement of shareholder equity, and comprehensive income, and all related notes.

- b. A description of the work crew structure that specifically includes the resources to be shared by more than one crew, including personnel, vehicles and equipment.
- c. A description of all vehicles, equipment, and tools that will be used, as well as the routine maintenance and electrical test interval for each piece of equipment or tool type. All safety-related test reports for each piece of equipment must be available upon CPS Energy's request.
- d. A copy of Bidder's training and safety programs for operating equipment, working around energized equipment, and handling, storing and disposing of waste material. The firm must have an established worker safety program and an established worker training program. Bidder shall include a training plan or flow chart that depicts the training modules/courses the workers will be evaluated on and methods used to test for successful completion prior to workers beginning work on CPS Energy projects.
- e. A copy of Bidder's corporate-level OSHA 200 and/or OSHA 300 logs for the past three (3) years – 2004, 2005 and 2006 and include all accident/incident rates and details for any fatalities listed in the logs. The firm must have a safe work record. CPS Energy will take into consideration the number of fatalities, major injuries, and minor injuries within the past three (3) years during its evaluation of bids. In the event there are accidents/incidents/fatalities, CPS Energy reserves the right to reject the Bidder's bid.
- f. A list of any citations, notices of violation, legal proceedings, or project terminations that any Federal, State, or local regulatory agency (e.g., OSHA) or department, or corporation or individual has issued to the firm, or any employee of the firm while that employee was performing work for the firm, in the past three (3) years. If there are no violations, Bidder shall provide a statement of such. In the event there are citations, notices of violation, legal proceedings, or any project terminations filed against the Bidder, CPS Energy reserves the right to reject the Bidder's bid.
- g. A letter of certification from a surety company to confirm that the Bidder is qualified to execute a valid performance bond and a valid payment bond for an estimated value herein.
- h. DOT Compliance: Only after the selected Bidder has been awarded a contract by CPS Energy shall it provide the following for ensuring compliance with the regulations promulgated by the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) and/or Research and Special Programs Administration (RSPA) which relate to the illegal use of alcohol and controlled substances:**



1. A Notarized Affidavit – that states the company placing the bid and its subcontractors are in compliance with the Department of Transportation Drug and Alcohol regulations for FHWA and/or RSPA.
2. A completed and signed Contractor DOT Compliance Document form and Contractor Anti-Drug/Alcohol Program Information DOT Compliance form.
3. A current copy of Bidder's Anti-Drug and Alcohol Plan for Testing. Bidders may call (210) 353-2120 to determine if the plan is on file and approved by CPS Energy Human Resources.
4. Proof of Supervisor's Training for Drug and Alcohol Awareness regulations in compliance with DOT regulations. Training should include the following: Pre-Employment/Placement Testing, Reasonable-Suspicion Testing, Post-Accident Testing, Return-to-Duty Testing, and Random Testing.
5. A Chain of custody form provided by the lab conducting the testing.
6. A statistical report on the latest Drug and Alcohol analysis from the lab conducting the testing.

CPS Energy Human Resources requires a letter acknowledging that service(s) provided to CPS Energy does (do) not require compliance with DOT regulations.

- i. Any other documents as required in this bid document.
- j. Bidder shall provide any exception to the specifications, requirements or the terms and conditions of this Contract. Exceptions must be clearly acknowledged and inserted in tracked-change (red-lined) format to a soft copy of the CPS Energy Contract, and must accompany the bid. If there are no exceptions, the words "NO EXCEPTIONS" must be stated. If no exceptions and/or clarifications are specified, CPS Energy will expect the awarded Contractor to comply fully with these Contract Documents.

#### **4. REJECTION OF BID**

Failure to submit information detailed in Section 2. *Qualifying Factors* and Section 3. *Additional Information to be Submitted* may be used, at the sole discretion of CPS Energy, in rejecting Bidder's bid.